

The Ministry of Finance has received the following question in regard to the procedure for conclusion of framework agreements for procedural representation and legal advice.

1. We refer to the Ministry's reply to Question No. 7 in the attached Clarification No. 3. The Ministry has clarified that "Settled cases will not be considered as successfully completed cases. The reason for this is that is very difficult to evaluate whether a particular settlement was successful without knowing the full details of the particular case and making a time-consuming analysis of the position of the parties."

While this may be true in the large majority of cases, there may be some limited circumstances where a tenderer may be able to present clear and convincing evidence of a successful settlement. Such limited circumstances could include, for example, where there is a Tribunal order discontinuing an investment treaty arbitration case against the State and public statements from the State and other press coverage that the State did not pay any compensation to an investor or where a tenderer submits a copy of a settlement contract demonstrating that the party represented by the tenderer received a substantial amount of the claimed damages or that counterclaims against that party were agreed to be dismissed pursuant to the terms of the settlement contract. We note in this regard that the tender instructions provide at s.III.2.5, p. 8 that acceptable evidence of successful outcome includes not only awards and other similar documents but also "parts of contracts", which may be interpreted to encompass "settlement contracts".

The Ministry of Finance provides the following answer to the question posed:

The Ministry of Finance has explained in a previous answer that a settlement will not be considered as a successfully completed case when reaching this conclusion requires a detailed time consuming analysis of the record of the case. Implied in the answer is that, in contrast, a settlement will be considered when a tenderer submits explanations and limited number of documents, such as a settlement agreement, an award incorporating a settlement agreement, statements of the parties, etc., which will allow the Ministry of Finance to reach a conclusion in more straightforward way.